



STEPHANIE RAWLINGS-BLAKE  
*Mayor*  
250 City Hall, 100 North Holliday Street  
Baltimore, Maryland 21202

September 21, 2016

The Honorable Bernard C. Jack Young  
President, Baltimore City Council  
City Hall, Suite 400  
Baltimore, MD 21202

The Honorable Joan M. Pratt, CPA  
Baltimore City Comptroller  
City Hall, Suite 204  
Baltimore, MD 21202

Mr. David Ralph  
Interim City Solicitor  
City Hall, Suite 101  
Baltimore, MD 21202

Mr. Rudolph S. Chow, PE  
Director, Department of Public Works  
200 Holliday Street, Suite 600  
Baltimore, MD 21202

Dear President Young, Comptroller Pratt, Interim Solicitor Ralph, and Director Chow,

I am pleased to release the first draft of Baltimore City's Procurement, Debarment/Suspension, and Grant Regulations for public review and comment. These draft regulations were drafted with the input of various City agencies, including representatives from your offices. Please be advised this draft refers to documents that are not included in the link. Based on the number of public comments, we anticipate the regulations will go before the Board of Estimates for its consideration sometime between November 2016 and January 2017.

I am inviting the public to review and comment on these regulations during the three-week comment period, which will close on **October 12, 2016**. Please direct all comments to Ms. Lara Simon at [Lara.Simon@baltimorecity.gov](mailto:Lara.Simon@baltimorecity.gov). There will be no responses to individual feedback until all emails have been reviewed.

Sincerely,

Stephanie Rawlings-Blake  
*Mayor*  
*City of Baltimore*

**PROCUREMENT REGULATIONS, DEBARMENT/SUSPENSION  
REGULATIONS, AND GRANT REGULATIONS  
OF  
BALTIMORE CITY**

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## **I. Procurement Regulations**

### **1. City Procurement System – General Overview.**

#### **1.1. Authority for these Regulations.**

1.1.1. The Board of Estimates of Baltimore City (the “Board”) has the authority to issue procurement regulations pursuant to the Baltimore City Charter, Art. VI §§ 2, 11.

1.1.2. The Board may waive these regulations for any particular procurement or class of procurements.

1.1.3. The Board’s approval of any procurement automatically waives any inconsistency with these regulations for that procurement.

#### **1.2. Applicability of these Regulations.**

1.2.1. These regulations apply to all City agencies (as defined in the City Charter) and other public entities subject to the procurement laws of the City.

1.2.2. Except as otherwise provided, these regulations apply to procurements anticipated to result in contracts exceeding \$25,000. Procuring Agencies may not divide contracts (splitting) for the purpose of avoiding the triggering limits.

1.2.3. These regulations are not applicable to certain transactions including real estate, land purchases, land dispositions, leases, licenses, easements, employee contracts, architect and engineering contracts, and rights of entry.

#### **1.3. Excluded Activities.** Nothing in these regulations shall prevent City agencies from complying with the terms and conditions of any grant, gift, or bequest if the item is approved by the Board. All procurements shall follow these regulations, regardless of funding source, except as specifically limited by the funding source, and approved by the Board in the acceptance of the funds.

#### **1.4. Procurement Authority.**

1.4.1. The Department of Finance has the authority to procure supplies, materials, equipment, and services other than professional services, on behalf of using agencies.<sup>1</sup>

1.4.2. City agencies have the authority to procure professional services.<sup>2</sup>

1.4.3. The Department of Public Works, Department of General Services, Department of Recreation & Parks, and the Department of Transportation have the authority to procure public works.<sup>3</sup>

1.4.4. The Law Department's approval is necessary for the retention of outside counsel to represent the City or any City agency.<sup>4</sup>

1.4.5. Any contract award is contingent upon the proper appropriation of funds by the City in accordance with the City Charter and Code.<sup>5</sup>

1.4.6. Execution of Contracts. Only the Mayor, the Mayor's designee, or the head of an agency may execute contracts on behalf of the City.<sup>6</sup>

## 1.5. Rules of Construction.

1.5.1. For public works and design-build contracts, wherever these regulations conflict with the most current version of "The City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures" and any officially issued addenda thereto (the "Green Book") or the Board of Estimates Policy Regarding the Use of Design Build Project Delivery approved by the Board on November 2, 2011, as amended from time to time, those documents shall prevail.

1.5.2. Where provisions of these regulations appear to conflict, the provisions of

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<sup>1</sup> See Baltimore City Charter Art. VII, § 17(b).

<sup>2</sup> See Baltimore City Charter Art. VI, § 11(d).

<sup>3</sup> See Baltimore City Charter Art. VI, § 11(h)(2)(i); Art. VII, § 31; Art. VII, § 132; Art. VII, § 67(a); and Art. VII, § 116.

<sup>4</sup> See Baltimore City Charter Art. VII, § 24(a).

<sup>5</sup> See Baltimore City Charter Art. VI, § 9.

<sup>6</sup> See Baltimore City Charter Art. VII, § 2(b).

the more specific section control the provisions of the general section.

1.5.3. The provisions of various documents should be interpreted, if possible, to be consistent with each other.

1.5.4. Where provisions of these regulations conflict with provisions of federal or state laws and regulations, the federal or state laws and regulations shall control if required by the federal or state funding source.

1.6. Appendices. Some resolutions of the Board and executive orders of the Mayor are attached as exhibits hereto and are incorporated herein. These regulations control over any conflicting resolutions / executive orders or resolutions / executive orders which are not attached hereto.

## 2. Definitions.

2.1. The words defined in this section have the meanings set forth below whenever they appear in upper or lower case, unless:

2.1.1. The context in which they are used clearly requires a different meaning; or

2.1.2. A different definition is prescribed for a particular section of these regulations.

2.2. Any definition for a word in this section is to be construed in a manner that is consistent with and supplementary to any definition contained in the City Charter and Code.

2.3. Authorized City official: A person granted specific authority to do a particular act by law, by delegation of authority, by official job description, by the law of agency or pursuant to contract provisions.

2.4. Bid: A binding offer to furnish supplies, materials, equipment, services, or public works in conformity with the specifications, delivery terms and conditions, and other requirements included in an invitation or request for bids ("RFB") (see § 2.52 of the



Procurement Regulations).

2.5. Bid bond: An undertaking, in a form satisfactory to the City, by which a third party agrees to be liable to pay the City a certain amount of money in the event a responder fails to sign a contract as bid.

2.6. Bid security: A certified check of the responder, a bank cashier's check, a bank treasurer's check drawn on a clearing house bank, a bank letter of credit, or a bid bond, deposited with, and at the request of, the City, to guarantee that the responder will, if selected, sign the contract as bid or mutually agreed, upon presentation of that contract to the responder.

2.7. Bidder: A person that makes a bid in response to an RFB.

2.8. Board: The Baltimore City Board of Estimates, including a quorum of the Board member's representatives, as described in the Baltimore City Charter Art. VI, § 1(c), and as otherwise provided in the City Charter.

2.9. Change order: A type of contract modification. A written directive by the Procuring Agency to the contractor directing a change in the scope of work and which may increase or decrease the contract time and / or the contract sum.

2.10. Change Order Review Committee (CORC): A committee consisting of representatives of the Department of Public Works, Department of Transportation, Department of General Services, the Law Department, and Audits that reviews all change orders for public works and all task assignments over \$100,000 before they are submitted to the BOE for approval.

2.11. City: Mayor and City Council of Baltimore, a political subdivision and municipal corporation of the State of Maryland.

2.12. City Agency: All City departments, bureaus, boards, commissions, and persons not embraced in a department who exercise authority comparable to that of heads of

departments or bureaus.<sup>7</sup>

2.13. Competition: The process by which more than one source of supply for supplies, materials, equipment, services, or public works is solicited.

2.14. Confidential information: Any information that is neither a matter of public knowledge nor available to the public on request.

2.15. Contract: Any agreement to which the City is a party for the procurement of supplies, materials, equipment, services, or public works, including any contract modification.

2.16. Contract award: The Board approval of a proposed award. See § 2.45 of the Procurement Regulations.

2.17. Contract modification: Any documented alteration in the specifications, delivery, contract period, price, quantity, or other contract provisions of any existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.

2.18. Contractor: Any person (see § 2.39 of the Procurement Regulations) obligated by a City procurement contract to provide supplies, materials, equipment, services, or public works to the City.

2.19. Day: Unless otherwise specified by law or in these regulations as a business day, a day shall mean a calendar day.

2.20. Debarment: The disqualification of a person (see § 2.39 of the Procurement Regulations), a principal of a business entity and any other person substantially involved in that person's contracting activities) from entering into a contract with the City for a period of time determined by the Board. See § II Debarment and Suspension Regulations.

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<sup>7</sup> See Baltimore City Charter Art. I, § 2(j).

2.21. Emergency: Any dangerous condition of such a nature that public welfare would be adversely affected by awaiting the approval of the Board.<sup>8</sup> An emergency is different from a condition of an “emergency nature,” which is an urgent situation that can wait for the approval of the Board.

2.22. Equipment: Tools, including devices, machines, or vehicles that assist a person in achieving an action beyond the normal capabilities of a human and that do not constitute real property or fixtures.

2.23. Evaluation committee: A committee of three or more individuals established by a Procuring Agency for the purpose of evaluating responses submitted by proposers in connection with an RFP.

2.24. Formal solicitations: Solicitations in the amount of \$50,000.01 or more. This dollar threshold is subject to modification by ordinance passed by two-thirds of the City Council.<sup>9</sup>

2.25. Grant: A transaction by which the government can provide financial assistance when the primary purpose of the funding is to accomplish some public support and stimulation. See Grant Regulations § III.

2.26. Green Book: The most current version of “The City of Baltimore, Department of Public Works, Specifications for Material, Highways, Bridges, Utilities and Incidental Structures” and any officially issued addenda thereto.

2.27. Informal solicitation: Any solicitation not required to be accomplished by a formal competitive process. See § 2.24 of the Procurement Regulations.

2.28. Liquidated damages: A sum agreed to in a contract to be paid as ascertained damages by the party who breaches the contract, and not as a penalty, where actual damages may be difficult to determine at the time of the breach.

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<sup>8</sup> See Baltimore City Charter Art. VI, § 11(e)(ii).

<sup>9</sup> See Baltimore City Charter Art. VI, § 11(b).

2.29. Master Blanket Purchase Order (MBPO): A purchase order for an indefinite quantity contract, such as a requirements contract, or for an annually recurring firm order, such as an annual software license agreement or a lease of equipment. An MBPO is not a notice to proceed, but is the notice to the contractor and the Using Agency that an award has been made, and an upset limit has been approved by the City. Individual release requisitions and release purchase orders must be initiated by the Using Agency to issue notice to proceed to a contractor on individual tasks, for specific quantities of items, or for each discrete unit of time. An MBPO must have a specific term.

2.30. Materials: The substance or matter of which anything is made; matter furnished for the erection of a structure; and / or matter used or intended to be used in the construction of any mechanical product that is not land or buildings.

2.31. May: Indicates an action that is permissible.

2.32. Minor irregularity: A failure to meet a requirement in a formal solicitation that is merely a matter of form (not substance) or is a defect or variation as to price, quantity, quality, or delivery that is trivial or inconsequential provision when contrasted with the total cost or scope of the procurement. A minor irregularity does not materially change the purpose or scope of the solicitation or undermine the competitive process by giving a responder an unfair advantage over others.

2.33. Non-competitive procurement: A non-competitive procurement in which supplies, materials, equipment, services or public works are of such a nature that no advantage will result in seeking, or it is not practicable to obtain, competitive responses, or when the needs for supplies, materials, equipment, services, or public works is of an emergency nature.

2.34. Notice of intent to waive competition: The Baltimore City Charter allows the City certain exceptions to the formal advertisement and competitive bidding requirements otherwise required by the Charter. The Baltimore City Charter Art. VI § 11 (e)(i) requires that, “when practicable, the City’s intent to make a purchase under this exception shall be posted electronically to the public for comment prior to the approval of the

purchase by the Board of Estimates.”

2.35. Notice to proceed: A written notice to the contractor issued by an authorized City official directing commencement of contract performance.

2.36. Open Market Purchase Order: A purchase order that is a one-time firm order for supplies, materials, equipment or services, for which the City does not already have an MBPO.

2.37. Payment bond: A bond issued by a surety that guarantees payment to suppliers and subcontractors of a prime contractor.

2.38. Performance security: A bond issued by a surety or a letter of credit that guarantees full performance of a contract by a contractor.

2.39. Person: Any individual, firm, partnership, corporation, company, association, or body politic except the City; and includes any personal representative, agent, trustee, receiver, assignee or other similar representative thereof.<sup>10</sup>

2.40. Pre-qualification: A process by which the Board approves construction-related contractors and consultants recommended by the Office of Boards and Commissions (“OBC”) as eligible to respond upon a specific category of work in a solicitation for a specific value threshold, if the contractor meets certain experience, financial, and other requirements of the City. Pre-qualification does not replace a determination of responsibility.<sup>11</sup> See rules governing operation of OBC.

2.41. Procurement: Purchasing, leasing, or otherwise acquiring any supplies, materials, equipment, services, or public works including all functions that pertain to the obtaining of any supplies, materials, equipment, services, or public works, including description of requirements, selection and solicitation of sources, evaluation of responders, preparation and award of contract, claim resolution and all phases of contract administration. A grant is not a procurement.

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<sup>10</sup> See Baltimore City Charter Art. I, § 2(d).

<sup>11</sup> See Baltimore City Charter Art. VI, § 11(g).

2.42. Procuring Agency: A City entity authorized to procure to the extent of its procurement authority. See § 1.4 of the Procurement Regulations.

2.43. Professional Services: Services that are predominantly mental or intellectual, rather than physical or manual, and require the application of the special knowledge, technical skill and the experience that comes from instruction, training and the exercise of mental facilities. Examples include the services of attorneys, physicians, architects, engineers, consultants, and other recognized professional individuals, associations, corporations, and groups whose services are customarily negotiated instead of competitively procured because of the individuality of those services and level of expertise involved.

2.44. Proposal: An offer binding on the proposer submitted in response to a request for proposals (“RFP”) or any other type of binding proposal. See § 2.54 of the Procurement Regulations.

2.45. Proposed award: A recommendation of the Procuring Agency to the Board that a specific responder is the successful responder after the evaluation of responses and the completion of any negotiations, if appropriate. This recommendation shall be made in accordance with these regulations and initiates the process by which a contract award may be made by the Board to the responder. May also refer to the recommendation of an evaluation committee to the Procuring Agency.

2.46. Proposer: A person that submits a proposal. See § 2.39 of the Procurement Regulations.

2.47. Protest: A challenge to the award of a bid to a particular bidder. All protests must be written and sent to the Board pursuant to the Bid Protest Regulations dated January 22, 2014. The protest must state: (1) whom the speaker represents and the entity that authorized the representation; (2) what the issues are and the facts supporting the position; and (3) how the protestant will be harmed by the proposed Board action.

2.48. Public notice: The means reasonably calculated to notify the public, such as inclusion on a Board meeting agenda, an advertisement, mailings, placing notices in

newsletters, and inclusion of public notice on the CitiBuy system or other electronic media.

2.49. Public works: A construction, reconstruction, demolition or maintenance of a physical structure that is attached to the land (e.g., a public building, recreation field, dock, bridge, ditch, road, alley, waterworks, storm drain, sewer, conduit, street light, and sewage disposal plant) which is: (1) primarily for public use; (2) government owned or operated; (3) accessible to the general public; and / or (4) government funded, wholly or in part, with no one factor being controlling.

2.50. Purchase Order: The electronic file residing in CitiBuy, the City's electronic procurement database located at [www.baltimorecitibuy.org](http://www.baltimorecitibuy.org), notice of which is emailed to the contractor after the City's approval of the award. If an Open Market Purchase Order is issued to the contractor, this is the contractor's notice to proceed. If an MBPO is issued to the contractor, this is notice that the City will commence placing orders, by issuing individual Release Purchase Orders.

2.51. Release Purchase Order: The electronic file residing in CitiBuy, notice of which is emailed to the contractor, which is the contractor's notice to proceed on an MBPO.

2.52. Request for bids (RFB): A solicitation in which competitive sealed bids are invited through a public notice procedure requiring that bids be received by a specified time, opened publicly, and are evaluated in terms of price. An RFB may be formal or informal.<sup>12</sup>

2.53. Request for information (RFI): A request for market information; it is not a solicitation unless the document provides otherwise.

2.54. Request for proposals (RFP): A solicitation to prospective proposers for providing supplies, materials, equipment, services, or public works in which the method of award is based on price and technical or other scoring.

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<sup>12</sup> The terms notice of letting and RFB are interchangeable as they are essentially the same formal procurement documents with different names.

2.55. Responder: Any person who submits a response to a City RFB, RFP, informal solicitation, or any other method the City uses to find sources to provide supplies, materials, equipment, services, or public works. See also definitions for Proposer and Bidder.

2.56. Response: A responder's submission in conjunction with any type of City solicitation for supplies, materials, equipment, services, or public works.

2.57. Responsibility: A determination, based on characteristics of a responder that demonstrates that the responder is capable of satisfying the City's needs and requirements for a specific contract, and includes a good faith determination of fitness, capacity, integrity, and other considerations affecting work performance and financial responsibility, as well as previous compliance with contract terms, including but not limited to subcontractor utilization required by the contract.

2.58. Responsible bidder / proposer / responder: A person capable of satisfying the City's needs and requirements for a specific contract. See § 2.57 of the Procurement Regulations.

2.59. Responsive bidder / proposer / responder: A person who has submitted a response that conforms in all material respects to the requirements of an RFB, RFP, or informal solicitation.

2.60. Responsiveness: A determination that a response complies with the material requirements of an RFB, RFP, or informal solicitation.

2.61. Services: The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. This is intended to include professional services, except where otherwise addressed in these regulations or otherwise intended by the Charter.

2.62. Shall: Indicates a requirement.

2.63. Solicitation: A request by an authorized City official for responses through a formal communication, with potential responders in accordance with these



regulations. This is intended to include informal solicitations, except where otherwise addressed in these regulations or otherwise intended by the Charter.

2.64. Specification: Requirements for supplies, materials, equipment, services, or public works that the City wishes to obtain.

2.65. Supplies: Consumable items that have a general purpose and a shorter life span than equipment and that need to be stocked for a recurring use.

2.66. Using Agency: The agency that requests supplies, materials, equipment, services, or public works from a Procuring Agency.

### 3. Ethics and Standards of Behavior.

3.1. Nondisclosure before Solicitation. Until the City publicly issues a solicitation, a person involved in a solicitation shall not release information concerning the solicitation to any unauthorized person. A person working on a solicitation, however, may obtain information from others for the purpose of aiding in drafting the contents of the solicitation.

3.2. Nondisclosure after Receipt of responses. Until the recommendation for award is made to the Board, a person involved in review of responses to a solicitation issued on behalf of the City, or who has been informed of the status or content of the review in the course of their duties, shall not release information concerning the solicitation or responses to it to any person not involved in the review of responses. This does not prohibit the Procuring Agency from making disclosures for briefing purposes.

3.3. Ethics Code. All City employees in the procurement process are subject to the City Ethics Code and the applicable regulations for standards of conduct required in contracting. Questions regarding ethical issues should be directed to the Executive Director of the City Ethics Board.

### 4. Release of Information.

4.1. Solicitations, responses and evaluations are subject to the Maryland Public

Information Act (“MPIA”). Generally, responses to solicitations are available for public inspection at the Board, located in Room 204 of City Hall, after the bid has been opened by the Board. If a responder believes its response includes confidential commercial information not disclosable under the MPIA, it must clearly designate that information when it submits it to the City.

4.2. The identities of the members of an evaluation committee shall remain confidential.

5. Contractor Pre-Qualification.<sup>13</sup>

5.1. Pre-qualification of public works contractors. OBC, under the oversight of the Office of Boards and Commissions Review Committee (“Committee”), is charged by the Board with responsibility in regard to all public works-related matters relating to prequalification, requalification, and disqualification of contractors and consultants and to the performance evaluation of consultants and contractors. See OBC Rules attached at exhibits.

5.2. Otherwise, a Procuring Agency in a formal solicitation may determine the requirements, if any, for the pre-qualification of responders.

6. Minority and Women’s Business Enterprises. Art. 5, Subtitle 28 of the Baltimore City Code contains the requirements for Minority and Women’s Business Enterprises as well as the Minority and Women-Owned Business Enterprises Regulations.

7. Formal Solicitation.

7.1. Public Notice. Public notice for procurements anticipated to result in a contract (excluding contracts for professional services) exceeding \$50,000 or such other number as established by the City Council, shall be published at least twice in a newspaper of general circulation published in Baltimore City and also published electronically at a site

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<sup>13</sup> See Baltimore City Charter Art. VI, § 11(g).

available to the public.<sup>14</sup> Publication shall be not less than 10 days and no more than 90 days before the date set for opening responses.<sup>15</sup>

7.2. Use of a Formal Solicitation. A formal solicitation must be used for any procurement expected to result in a contract valued at more than \$50,000 unless the procurement meets the requirements for another type of solicitation defined in these regulations.

7.3. Formal Solicitations – RFBs, Competitive Sealed Bids.

7.3.1. General. An RFB is a formal solicitation by which competitive sealed bids are invited through a public notice procedure that results in an award to the lowest responsive and responsible bidder.<sup>16</sup>

7.3.1.1. Any prospective bidder who requests a change in or is uncertain as to the true meaning of the specifications or other contract documents or any part thereof, shall submit to the person indicated in the solicitation a written request for the change or interpretation. The request, with supporting documents, drawings, etc. shall be received by the Procuring Agency on or before five business days prior to the day on which the bid is due, or longer as specified by the document.

7.3.1.2. Any substantive change or interpretation of the contract documents or specifications in the solicitation, if made, will be made only by addendum duly issued. A copy of such addendum will be furnished or made available to each known person receiving the solicitation. Any explanations, changes, or interpretations to the proposed documents in the solicitation made or given prior to the award of the contract shall not be binding on the City, unless contained in an addendum.

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<sup>14</sup> The Baltimore Sun is currently the only newspaper of general circulation in the City. A solicitation for supplies, materials, equipment and services is published electronically in CitiBuy. A solicitation for public works is published electronically by the listing of a notice of letting in the agenda of the Board of Estimates.

<sup>15</sup> See Baltimore City Charter Art. VI, § 11(c).

<sup>16</sup> See Baltimore City Charter Art. VI, § 11(h).

7.3.1.3. The omission by the City of any specifications or details of any specification in the solicitation which would normally apply to the supplies, materials, equipment, services, or public works specified herein, shall not relieve the bidder from fulfilling those required specifications needed to provide supplies, materials, equipment, services, or public works best suited to the intended purpose of the solicitation as determined by the Procuring Agency.

7.3.2. Procedure.

7.3.2.1. RFBs are issued and public notice given by the Procuring Agency.

7.3.2.2. Bids are irrevocable once filed.<sup>17</sup>

7.3.2.3. Bids shall be submitted in the form and manner indicated by the solicitation document and solicitation forms. Any bid that does not fully respond to and comply with all the detailed specifications or other requests for information including execution of bid forms may be declared “non-responsive” by the City and recommended for rejection. The City shall not be responsible for any errors or omissions of the bidder.

7.3.2.4. Bidders shall submit bids by 11:00 a.m. on the date indicated in the document to the Board, located in Room 204 of City Hall, or at any other time or location determined by the Board.

7.3.2.5. The Board shall time-stamp each bid when received. Bids received after 11:00 a.m. shall not be accepted.

7.3.2.6. The Board publicly opens bids at 12 noon on Wednesdays. The Board: (1) publicly opens all timely bids received at that time; (2) at the Board’s option, reads the bids aloud to the persons present; and (3) leaves

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<sup>17</sup> See Baltimore City Charter Art. VI, § 11(h)(1)(iv).

a copy of the RFB and the bids in the Office of the Board for review by interested persons for a reasonable period of time or makes arrangements for the furnishing of copies of these documents to interested persons, as further described in § 4 of the Procurement Regulations. In the event of unusual circumstances, the Board will determine the opening date, time, and location.

7.3.2.7. No statement or comment made while opening the bids is binding on the City or has any effect with respect to interpretation of the solicitation documents or bids received. Opening bids is a ministerial function as part of a public process.

7.3.2.8. The Board shall forward all bids received to the Procuring Agency for evaluation, unless the Board refers the bid to the Law Department for review.

7.3.2.9. The Procuring Agency shall evaluate the bids in accordance with the method of award criteria and for responsiveness and responsibility, and forward recommendations to the Board. Only award criteria set forth in the RFB shall be considered for the bid evaluation.

7.3.2.10. In the case of tie bids, the Using Agency, with written notice to the Department of Finance, shall make a written recommendation and report to the Board setting forth all pertinent considerations and reasons for its recommendation.<sup>18</sup> The Board, after considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie bid.

7.3.2.11. The Board shall post the name of the proposed contract awardee or the proposed rejection of all bids on the Board's agenda.

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<sup>18</sup> See Baltimore City Charter Art. VI, § 11(h)(1)(iii).

7.3.2.12. The Board shall award the contract as an entirety to the lowest responsive and responsible bidder, or by items to the respective lowest responsive and responsible bidders, or reject all bids.<sup>19</sup> The decision to reject all bids is final and not subject to protest.

7.3.2.13. When alternative bids are invited for two or more different things, after all bids are opened, the Using Agency recommends to the Board selection of the particular items that will be procured and shall recommend award of the contract to the lowest responsive and responsible bidder for that particular item in accordance with the solicitation document.<sup>20</sup>

#### 7.4. Formal Solicitations – RFPs, Competitive Sealed Proposals.

7.4.1. General. An RFP is a formal solicitation for competitive sealed proposals. Proposals are publicly opened. Final costs and scope of work may be subject to negotiation after the proposals are received and before the contract is awarded if stated in the RFP. An RFP results in an award to the highest scoring responsive and responsible proposer.

#### 7.4.2. Proposal Receipt.

7.4.2.1. RFPs are issued and public notice given by the Procuring Agency.

7.4.2.2. Technical responses to RFPs are publicly opened by the Board and forwarded to the Procuring Agency for review, consideration, and scoring. At the request of the Procuring Agency, price proposals are publicly opened by the Board and forwarded to the Procuring Agency.

7.4.2.2.1. Once filed, a proposal is irrevocable.

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<sup>19</sup> See Baltimore City Charter Art. VI, § 11(h)(1)(ii).

<sup>20</sup> See Baltimore City Charter Art. VI, § 11(h)(1)(ii).

7.4.2.2.2. Until a proposed award for an RFP is posted, all technical responses to RFPs are confidential information and shall not be released to the public, except as required by § 4 of the Procurement Regulations.

7.4.2.3. The Procuring Agency submits its recommendation for award or rejection of all proposals to the Board.

7.4.2.4. In the case of a tie in the final score, the Procuring Agency, with written notice to the Department of Finance, shall make a recommendation and report to the Board setting forth all pertinent considerations and the reasons for its recommendation. The Board, after also considering the recommendation of the Department of Finance, may then award the contract in its discretion, as long as the total cost to the City does not exceed the amount of the tie proposal.

7.4.2.5. The Board shall post the name of the proposed contract awardee or the proposed rejection of all proposals on the Board's agenda.

7.4.2.6. The Board shall award the contract as an entirety to the highest scoring responsive and responsible proposer or reject all proposals. The decision to reject all proposals is final and not subject to protest.

7.4.2.7. The Procuring Agency may negotiate a contract with the proposed awardee if negotiation is provided for in the solicitation.

7.5. Proposal Evaluation by the Bureau of Purchases.

7.5.1. All evaluations of proposals shall be done by an evaluation committee. The procurement officer of the Bureau of Purchases has the sole authority to select the evaluation committee members, subject to these regulations.

7.5.2. Each evaluation committee shall be made of at least three individuals.

7.5.3. No more than 50% of each committee shall be employees or consultants of

the Using Agency.

7.5.4. Conflicts. No committee members shall have a conflict of interest relating to the evaluation of proposals submitted in response to the RFP.

7.5.4.1. If applicable, a dedicated member of the Bureau of Purchases may sign up to be a viewer of any member's financial disclosure on file with the Ethics Board. Members should be notified that their disclosures may be reviewed.

7.5.4.2. All members of the committee shall execute a conflict of interest disclosure form approved by the Law Department.

7.5.5. Only those persons approved by the procurement officer and his or her supervisor shall be on the evaluation committee.

7.5.6. Disclosure. No procurement officer or committee member shall disclose any information relating to the evaluation of proposals submitted in response to the RFP, including but not limited to the committee members, the status of the evaluation, the contents of the proposals or the scores, to any person except as specifically allowed in writing by the procurement officer of the Bureau of Purchases.

7.5.6.1. All committee members shall execute a non-disclosure agreement approved by the Law Department.

7.5.6.2. Names of committee members shall be kept confidential even after award of the contract.

7.5.7. Individual committee member scores shall be kept confidential, unless the Law Department determines that the scores shall be released. However, the committee member names shall remain confidential.

7.6. Formal Solicitation Cancellation / Rejection of all Bids.



7.6.1. Cancellation Before Time for Opening. The Procuring Agency may cancel a formal solicitation in whole or in part before the opening or due date when it decides that this action is in the best interest of the City. Notice shall be given to the Board.

7.6.2. Notice to Responders of Cancellation of Formal Solicitation. The Procuring Agency should communicate cancellation of a solicitation by a method determined in the Procuring Agency's sole discretion to give appropriate notice of the cancellation to responders at the earliest possible time. Responders are not entitled to any compensation in connection with cancellation of a solicitation.

7.6.3. Cancellation Final. The decision to cancel a solicitation is final and is not subject to review or protest.

7.6.4. Rejection of all Bids after Time for Opening. The Procuring Agency may recommend to the Board that it reject all responses to a formal solicitation when it decides that this action is in the best interest of the City. The Board's decision to reject all responses to a formal solicitation is final and not subject to protest.

7.7. Responsiveness and Responsibility.

7.7.1. Responsiveness.

7.7.1.1. The Procuring Agency shall recommend to the Board whether a responder is responsive; the Board shall make the final determination.

7.7.1.2. In determining responsiveness, the Procuring Agency shall consider, among other factors, the following:

7.7.1.2.1. Conformance with the terms and specifications of the solicitation such as:

7.7.1.2.1.1. Each of the solicitation forms required by the solicitation should be fully and accurately completed.

7.7.1.2.1.2. All required information should be included.

7.7.1.2.1.3. All signatures should be by hand and not an imprint or typed name.

7.7.1.2.1.4. If required by the Procuring Agency, corporate seals should be affixed.

7.7.1.2.1.5. Any corporation or other legal entity completing solicitation forms should be fully and consistently identified using the entity's full legal name and executed by a person with authority to bind the entity.

7.7.1.2.1.6. All signatures requiring a witness should be so witnessed by a written signature and where a title of an officer, agent, or authorized person is required to be given it should be clearly provided.

7.7.1.2.1.7. All notary certificates should be fully and completely filled out and properly sealed by a notary public in good standing.

7.7.1.2.2. The Procuring Agency should consider whether the nature and scope of the response is complete (including previously approved deviations, if allowed by the Procuring Agency, that are included in the response).

7.7.1.2.3. The Procuring Agency should consider whether any deviation or failure to conform contained in the response pertains to a material part of the solicitation.

7.7.1.2.4. As applicable, the Procuring Agency should consider whether the response meets the requirements of the Green Book and Purchases General Terms and Conditions.

7.7.1.3. Any response which: (a) contains information, statements, conditions, or qualifications which place conditions or qualifications on the response for purposes of making an award; or (b) which materially alter any solicitation terms, conditions, specifications on the response for purposes of making an award, or which alter any solicitation terms, conditions, specifications, or forms, which had not previously been approved by written addendum issued by the Procuring Agency, or (c) which does not meet legal requirements shall be declared a non-responsive bid and shall be rejected without further consideration.

7.7.1.4. A responder may be requested at any time by the Procuring Agency to provide additional clarification or information that relates to the determination of responsiveness. Failure to furnish information requested by the solicitation may constitute grounds for a finding of non-responsiveness of the prospective responder. Further, the Procuring Agency may conduct discussions with responsible responders who submit responses determined to be reasonably susceptible of being selected for award in order to clarify the responses to assure the responders' full understanding of, and responsiveness to, the solicitation requirements. The Procuring Agency shall accord responders fair and equal treatment with respect to any opportunity for discussion. In conducting discussions, there shall be no disclosure of any information derived from responses submitted by competing responders.

7.7.1.5. If a Procuring Agency recommends to the Board a finding of non-responsiveness for a responder, the Procuring Agency shall notify the affected responder in writing of this recommendation no fewer than five calendar days before the date of award of the contract by the Board.

7.7.1.6. At the request of the Procuring Agency, the Board may give a responder 10 business days to cure any deficiency resulting from a minor irregularity in a response or may waive the deficiency, whichever is to the

advantage of the City. The decision of the Board with respect to whether a defect is a minor irregularity at its sole discretion.

7.7.1.7. Mistakes in Bids.

7.7.1.7.1. If the Procuring Agency knows or has reason to conclude that a mistake has been made, the Procuring Agency may require a responder to confirm the contents of a response within 10 business days from the date of written notice by the Procuring Agency. Situations in which confirmation should be requested include obvious, apparent errors on the face of the response or a response that is unreasonably lower or higher than the other responses submitted.

7.7.1.7.2. If the responder alleges a mistake and the mistake is clearly evident on the face of the response, the Procuring Agency may correct the response. Examples of mistakes that are clearly evident on the face of the response are typographical errors, errors in extending unit prices, and arithmetical errors.

7.7.1.7.3. A responder may not be permitted to withdraw a response even if a mistake is clearly evident on the face of the response.

7.7.2. Responsibility.

7.7.2.1. A responder must be responsible. The Procuring Agency shall recommend to the Board whether a responder is responsible for the Board's final determination. Prior to written notice to an affected responder and / or a recommendation to the Board that a responder be found non-responsible, the Procuring Agency should consult with the Law Department.

7.7.2.2. The factors that may be considered in connection with a

determination of responsibility include, but are not limited to:

7.7.2.2.1. The ability, capacity, organization, facilities, and skill of the responder to perform the contract;

7.7.2.2.2. The ability of the responder to perform the contract or provide the services within the time specified without delay, interruption or interference;

7.7.2.2.3. The integrity, reputation and experience of the responder, and its key personnel;

7.7.2.2.4. The quality of performance of previous contracts or services for the City or other entities. Past unsatisfactory performance is sufficient to justify a finding of non-responsibility;

7.7.2.2.5. The previous and existing compliance by the responder with laws and ordinances relating to the contract or services;

7.7.2.2.6. The sufficiency of financial resources of the responder to perform the contract or provide the services;

7.7.2.2.7. The certification of an appropriate accounting system, if required by the contract type. Advice should be obtained from the Department of Finance as to the accounting system required for the particular solicitation;

7.7.2.2.8. A bid bond and the responder's evidence of ability to furnish a performance bond and / or payment bond may be considered in an overall determination of responsibility;

7.7.2.2.9. Whether a responder is in default of payment of any money due the City;

7.7.2.2.10. Debarment by the City or other entity; and

7.7.2.2.11. Results of reference checks.

7.7.2.3. A responder may be required at any time by the Procuring Agency to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure to furnish requested information may constitute grounds for a finding of non-responsibility of the prospective responder. Any and all information received from references or other information about past performance may constitute grounds for a finding of non-responsibility.

7.7.2.4. If a Procuring Agency recommends a finding of non-responsibility for a prospective responder to the Board, the Procuring Agency shall notify the affected responder in writing of this recommendation no fewer than five calendar days before the date of the Board's consideration.

7.8. Debriefing of Unsuccessful Responder.

7.8.1. After contract award, unsuccessful responders may be debriefed upon written request submitted to the Procuring Agency within a reasonable time. Debriefings may be provided at the earliest feasible time after contract award and shall be conducted by an authorized City official familiar with the rationale for the selection decision and contract award. In conducting debriefings, there shall be no disclosure of any information derived from responses submitted by competing responders.

7.8.2. Debriefing will:

7.8.2.1. Be limited to discussion of the unsuccessful responder's response and may not include specific discussion of a competing responder's response;

7.8.2.2. Be factual and consistent with the evaluation or the unsuccessful

responder's response; and / or

7.8.2.3. Provide information on areas in which the unsuccessful responder's technical response was deemed weak or deficient or the reasons for which a responder was found non-responsive and / or non-responsible.

7.8.3. Debriefing will not include discussion or dissemination of the notes or rankings of individual members of an evaluation committee, but may include a summary of the authorized City official's rationale for the recommended contract award.

7.8.4. A summary of the debriefing shall be made a part of the contract file.

7.9. Bid Security.

7.9.1. Bid Security Requirements.

7.9.1.1. When the successful responder executes the contract and, if required, the performance and payment bond, the City shall return to all responders the bid checks or release the bid bonds. If the City has deposited bid checks, the City shall reimburse these to the responders in the amounts of the bid checks.<sup>21</sup>

7.9.1.2. All bid security forms should have all blanks filled in, contain the signature of the responder and the signature of the surety, and have a valid power of attorney form attached. Any deficiencies in either the bid bond or the power of attorney, if required, may be immediate grounds for response rejection.

7.9.1.3. Bid security may only be submitted from surety companies that, at the time of response submission and / or contract execution, are authorized to transact business in the State of Maryland.

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<sup>21</sup> See Baltimore City Charter Art. VI, § 11(h)(4).

7.9.1.4. If the City makes an award but, within 10 business days after award, the successful responder does not execute and return the contract, provide acceptable performance and payment bonds, certificates of insurance, minority participation documentation and other submission requirements set forth in the solicitation documents, then the City may terminate the award to the successful responder and the successful responder's bid security shall be forfeited to the City as liquidated damages, which is not intended nor should be construed as a penalty.<sup>22</sup>

7.9.1.5. If a responder is not required to file a bid security and the responder fails to execute and perform any contract awarded to that responder, the responder shall forfeit the right to bid on any future City contract for a period of time determined by the Board, and shall be liable for any costs incurred by the City as a result of the default.<sup>23</sup>

7.9.2. Public Works Bid Security.

7.9.2.1. All responses for construction contracts let for the Department of Public Works, the Department of General Services, the Department of Transportation, and the Department of Recreation & Parks and any other contracts for public works shall include a check or bid bond.<sup>24</sup>

7.9.2.2. If a check, the check shall be a certified check of the responder, a bank cashier's check, or a bank treasurer's check, drawn on a clearinghouse bank. The check shall be in an amount provided by the bid specifications or by an order or regulation of the Procuring Agency. In the case of bid checks of \$5,000 or less, the check may be of any type drawn on any banking institution of the United States.<sup>25</sup>

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<sup>22</sup> See Baltimore City Charter Art. VI, § 11(h)(3)(iv).

<sup>23</sup> See Baltimore City Charter Art. VI, § 11(h)(5).

<sup>24</sup> See Baltimore City Charter Art. VI, § 11(h)(2)(i).

<sup>25</sup> See Baltimore City Charter Art. VI, § 11(h)(2)(ii).



7.9.2.3. The bid bond shall be for an amount which is determined by the Green Book or solicitation.

7.9.2.4. Failure to comply with bid security requirements shall be grounds for rejection.

7.9.3. Bureau of Purchases Bid Security.

7.9.3.1. The Director of Finance may determine procedures by which, at the time of the advertisement of a solicitation, the bid security in connection with a bid or proposal for supplies, materials, equipment, or services other than professional services will be provided.

7.9.3.2. Minor irregularities or technicalities in the form or amount of bid security submitted in accordance with a solicitation create a “deficient bid security”.

7.9.3.3. If deficient bid security for a non-public works contract is provided by a responder, and the Department of Finance determines that the deficient bid security does not result in fiscal disadvantage or harm to the City and acceptance of the response is in the best interests of the City, then the Department of Finance may, in its sole discretion, either: (1) give the responder an opportunity to cure the deficient bid security in its response; or (2) waive the deficient bid security.

7.9.3.4. Opportunity to Cure. Within five business days from the Department of Finance’s determination that a responder has an opportunity to cure its deficient bid security, the procuring officer named in the solicitation shall send the responder written notice that the responder has 10 business days from the date of the notice to correct the deficient bid security.

7.9.3.5. Determinations Required. When the Department of Finance gives a responder an opportunity to cure its deficient bid security, waives

deficient bid security, or rejects a response due to deficient bid security, the authorized City official named in the pertinent solicitation shall prepare a memorandum explaining the Department of Finance's determination in accordance with these regulations.

7.10. Performance and Payment Bonds, Irrevocable Letters of Credit, and Self-Insurance Certification.

7.10.1. For public works contracts let by the Department of Public Works, the Department of General Services, the Department of Transportation, and the Department of Recreation & Parks, and any other contracts for public works, the responder shall execute and deliver to the City a good and sufficient performance bond, irrevocable letter of credit or certification that the successful responder meets the requirements under the City's self-insurance program for performance coverage as well as a payment bond.

7.10.2. For Bureau of Purchases' contracts, the Director of Finance shall implement policies and procedures to determine whether to require a performance bond for a contract, the term and face value of the bond, and the manner by which the responder shall provide the bond.<sup>26</sup>

7.10.3. Performance and Payment Bonds.

7.10.3.1. Amounts for Performance Bond, Payment Bond Letter of Credit, and Certification. The bond, letter of credit, or certification, shall be:<sup>27</sup>

7.10.3.1.1. in an amount equal to the full contract price; or

7.10.3.1.2. for Bureau of Purchases' contracts, in an amount as determined by the Director of Finance and named in the formal solicitation.

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<sup>26</sup> See Baltimore City Charter Art. VI, § 11(h)(3)(ii).

<sup>27</sup> See Baltimore City Charter Art. VI, § 11(h)(3)(iii).

7.10.3.2. Performance and Payment Bond Requirements. All bonds shall meet the following minimum requirements:

7.10.3.2.1. At the time of submission and / or contract execution, the surety company issuing the bond shall be:

7.10.3.2.1.1. qualified and licensed to do business in the State of Maryland and

7.10.3.2.1.2. listed as an approved surety for projects in excess of the response and / or contract amount on the U.S. Treasury's Circular 570, List of Approved Sureties.

7.10.3.2.2. Any attorney-in-fact on the bond document shall be properly authorized to bind the surety in the full amount of the bond. The power of attorney submitted with the bond shall document the attorney-in-fact's authority. The power of attorney submitted with the bond shall be an original with an original signature of the surety, unless the power of attorney specifically permits copies to be effective or valid.

7.10.3.2.3. The obligee of the bond shall be "Mayor and City Council of Baltimore" and any additional or other obligee required by the City.

7.10.3.2.4. The performance bond shall contain the express stipulation on the part of the contractor that it will defend, indemnify, and save harmless the Mayor and City Council of Baltimore against any suit or suits, loss, damage, or expense, to which the Mayor and City Council of Baltimore may be subjected by reason of any default or negligence, want of skill, or care on the part of the contractor, its agents or employees, or of any subcontractor, in or about the performance and execution of the work.

7.10.3.2.5. The bond shall be an original with original signatures of all required signatories. All bond forms shall contain the signature of the contractor and the signature of the surety, have a valid power of attorney form attached, if required, and have all blanks filled in.

7.10.3.3. Irrevocable Letter of Credit Requirements. To be acceptable, any irrevocable letter of credit shall contain at least the following terms:

7.10.3.3.1. The irrevocable letter of credit shall be presentable to an institution located within the State of Maryland.

7.10.3.3.2. The issuer of the irrevocable letter of credit shall consent to the letter of credit being governed by, and construed in accordance with, the laws of the State of Maryland.

7.10.3.3.3. The issuer of the irrevocable letter of credit shall consent to personal jurisdiction in the State of Maryland.

7.10.3.3.4. In the event that any legal action is filed upon the letter of credit, venue shall lie exclusively in a court of competent jurisdiction in Baltimore City.

7.11. Authority to Require Additional Security. Nothing in this regulation shall be construed to limit the authority of the Procuring Agency to require additional security from a responder or contractor.

7.12. Bond Forms and Copies.

7.12.1. Bond Forms. All bonds shall be approved by the Law Department for form and legal sufficiency.

7.12.2. Copies of Bonds. Any person may obtain from the Procuring Agency a copy of a bond upon request.

7.13. Insurance.

7.13.1. General. A responder shall meet all the insurance coverage requirements of the City. Any insurance required by the City shall remain in force during the life of a contract with the City. The contractor shall name the Mayor and City Council of Baltimore as an additional insured on all applicable insurance policies.

7.13.2. Types of Insurance Coverage. For contracts for supplies, materials, equipment, services, and public works, the City generally requires coverage for commercial general liability insurance, business automobile liability insurance, cyber liability insurance, and workers compensation insurance. Service contracts may also require professional liability or errors and omissions insurance. Additionally, contracts for public works generally require special hazards insurance such as railroad insurance, builder's risk insurance, or environmental liability insurance.

7.14. Contract Awards after a Formal Solicitation.

7.14.1. The Procuring Agency shall notify all responder(s) for whom responses were forwarded by the Board informing them who the proposed contract awardee is prior to the Board meeting for approval of the contract awardee.

7.14.2. The Procuring Agency shall also provide written notice prior to the Board meeting to responder(s) who have been rejected due to non-responsiveness or non-responsibility.

7.14.3. Until the Board posts a proposed award, all information concerning the evaluation and recommendation is confidential.

7.14.4. Responders are responsible for keeping informed of the status of the solicitation process. Public posting of a proposed award constitutes notice to all responders of the proposed award.

7.15. Formal Solicitation Copies.

7.15.1. Formal Solicitation Copy Fees.

7.15.1.1. Electronic Solicitations. Solicitations issued electronically by the City are not available for purchase.

7.15.1.2. Paper Solicitations. A copy fee is required for public works plans and specifications. The Procuring Agency shall calculate a minimum copy fee or a variable copy fee based upon the costs associated with preparing and printing of public works plans and specifications for each procurement (also referred to as the specification book).

7.15.1.3. Formal Solicitation Amendments. No fee.

7.15.1.4. Payment. The City shall not release a copy of the solicitation until the requestor pays all required copy fees in full. The full applicable copy fee shall accompany each request for a new solicitation. A responder may view a solicitation, but cannot submit a copy stamped “Not for Bidding Purposes” for consideration.

7.15.1.5. Refunds. Minimum and variable copy fees are not refundable under any circumstances, including cancellation of a solicitation.

7.15.1.6. Transfers. Minimum and variable copy fees are not transferable.

7.15.1.7. Waiver of Fees. The Procuring Agency may waive the solicitation copy fees:

7.15.1.7.1. if the solicitation copy fees would unduly restrict competition;

7.15.1.7.2. for responders who previously purchased a solicitation which is subsequently withdrawn by the City and re-advertised;

7.15.1.7.3. if the solicitation copy fees would cause undue hardship; or

7.15.1.7.4. when in the best interest of the City.

8. Professional Services Solicitation.

8.1. Formal advertisement and competitive bidding for professional services is not required by the Charter. Even though a competitive procurement process described in these regulations is the preferred method for the selection of professional services, it is at the discretion of the Using Agency whether to use a competitive procurement process. In the case where a Using Agency decides to use a competitive procurement process, the Using Agency may use an informal or formal solicitation process to obtain professional services, or request the aid of the Procuring Agency. The solicitation process should include a comparison of prospective professionals.

8.2. For architectural and engineering services, see “City of Baltimore Resolution Relating to Architectural & Engineering Services” approved by the Board on March 5, 1997, as amended from time to time, and attached as an exhibit.

9. Informal Solicitation – RFI.

9.1. The Procuring Agency may use an RFI in the planning phase to gather market research when the Procuring Agency is unable to clearly identify the availability of contractors, specifications for a project, and / or types of products or services needed for a project. After an RFI, the Procuring Agency should have a better understanding of market conditions, contractor interests, and project specifications. A respondent shall not receive a contract award as a result of the RFI. An RFI does not constitute a commitment, implied or otherwise, that the Procuring Agency will take procurement action in the future.

9.2. The RFI is accomplished by the following steps:

9.2.1. The Procuring Agency issues the RFI to the general public and / or interested persons in a reasonable manner (e.g., through publications, on the internet, by email, etc.)

9.2.2. Respondents send their RFI responses directly to the Procuring Agency.

9.2.3. The Procuring Agency evaluates the RFI responses.

9.2.4. Responses to an RFI will not be returned. Respondents are solely responsible for all expenses associated with responding to an RFI. The Procuring Agency will not pay for information received in response to an RFI.

10. Emergency Procurement.<sup>28</sup>

10.1. This applies to procurements that would otherwise require Board approval. In the event of an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board, the Department of Finance, upon application by the authorized official of the Using Agency,<sup>29</sup> may proceed to obtain the supplies, materials, equipment, services, or public works required without formal advertisement and the prior approval of the Board.

10.2. The Department of Finance or the Using Agency shall promptly submit to the Board a full report of any emergency procurement.

10.3. An emergency procurement may only be used when properly documented facts exist that demonstrate that an emergency exists.

10.4. For all emergencies not requiring the Board's approval, the City Purchasing Agent may approve in lieu of the Director of Finance if permitted by the Director of Finance.

10.5. Contractors must use best efforts to provide insurance, performance and payment bonds, and indemnify the City as required by the Procuring Agency.

11. Non-Competitive Procurement (No Advantage, Not Practicable, or Emergency Nature).<sup>30</sup>

11.1. Procedure.

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<sup>28</sup> See Baltimore City Charter Art. VI, § 11(e).

<sup>29</sup> See Baltimore City Charter Art. VI, § 11(e)(ii).

<sup>30</sup> See Baltimore City Charter Art. VI, § 11(e)(i).



11.1.1. A non-competitive procurement without formal advertisement may occur only when:

11.1.1.1. no advantage will result or it is not practicable to obtain competitive responses for supplies, materials, equipment, services other than professional services, or public works; or

11.1.1.2. the need for supplies, materials, equipment, or services other than professional services or public works is of an emergency nature.

11.2. Prior Approval Required.

11.2.1. A purchase may not be made and the City may not incur any obligation to make payment until the Board, after considering the recommendation of the Department of Finance, approves the purchase.

11.2.2. When practicable, the City's intent to make a purchase under this exception shall be posted electronically to the public for comment prior to the recommendation of the purchase to the Board.

11.3. Notice of Intent to Waive Competition.

11.3.1. Sole Source. When the supplies, materials, equipment, services other than professional services, or public works are only available from one source, the contractor must provide a written statement describing the claim of sole source. The Procuring Agency will independently verify the claim and if approved by the Department of Finance, it will be considered that "no advantage would result" from formally advertising and requesting competitive bids. As electronic posting of the Notice of Intent to Waive Competition for a sole source is not practicable, it will not be required when a sole source is certified, verified and approved. In the event a Using Agency submits inadequate information to support a sole source request, the Procuring Agency may elect to review the request as one for a selected source. An example of adequate information is a letter from the contractor on their letterhead that they are the only contractor to provide supplies,

materials, equipment, or services other than professional services. The Procuring Agency may also consider research evidence provided by the Using Agency. The Using Agency must fill out the justification form completely and have the appropriate parties sign it.

11.3.2. Selected Source. When the supplies, materials, equipment, services other than professional services, or public works are available from more than one source but for other reasons, the contractor or the Using Agency shall supply a written statement describing the reason requesting that formal advertisement and competitive bidding be waived. The Procuring Agency will independently verify the statement and if approved by the Department of Finance, it will be considered that “no advantage would result” from formal advertisement and competitive bidding, or that it would not be “practicable” to obtain the bids. When practicable, the City’s intent to make a purchase under this exception shall be posted electronically to the public for comment prior to the Department of Finance’s recommendation of the purchase to the Board. The Using Agency must fill out the justification form completely and have the appropriate parties sign it.

11.3.3. Responses Received after Posting Notice. When a Notice of Intent to Waive Competition is posted electronically, the Procuring Agency shall not recommend action to the Board until the allotted time for responses has passed, and the responses, if any, have been reviewed and considered.

12. Conflict of Interest. By executing a contract, the contractor asserts that it has not engaged in any practice or entered into any past or ongoing contract that would be considered a conflict of interest with the instant contract. The contractor agrees to refrain from entering into all such practices or contracts during the term of the instant contract (and any extensions thereto), including any agreements and / or practices that could give rise to even the appearance of a conflict of interest. Furthermore, the contractor asserts that it has fully disclosed to the City any and all practices and / or contracts of whatever nature or duration that could give rise to even the appearance of a conflict of interest with the parties or subject matter of the instant agreement and will continue to do so during the term of the contract and any extensions thereto. Additionally, the contractor warrants that it has not employed or

retained any company or persons, other than a bona fide employee working solely for the contractor, to solicit or secure the contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the contract. The contractor further warrants that it has not, and will not, employ or retain any company or persons who are in violation of the Baltimore City Ethics Code § 6-11, § 6-22, or § 6-38 to assist in procuring or executing the contract.

### 13. Contract Modification.

#### 13.1. General.

13.1.1. Authorization. The contractor, Using Agency, or Procuring Agency may propose a contract modification. Only a documented modification approved and executed in the same manner as the original contract is effective (e.g. execution by the Procuring Agency, approved for form and legal sufficiency by the Law Department, and approved by the Board if the Board approved the original contract).

13.1.2. When applicable, the Board may approve, approve with conditions, or reject any contract modification.

13.2. Public Works Change Orders. The contractor or Procuring Agency may propose a change order to a public works contract. Only a written change order approved according to the Green Book and approved by the Board when required is effective.

### 14. Termination.

14.1. Authority to Terminate. The Procuring Agency may terminate a contract contingent on the approval of the Board.

14.2. Termination Provisions in a Contract. The Procuring Agency shall include termination provisions approved by the Law Department in a contract.

14.3. Termination Methods. A contract may be terminated in four ways:

14.3.1. Termination for Default. A contract may be terminated for default. If the contractor materially breaches the contract, the City, at its option, may cancel in whole or in part work under the contract. If it is determined that the City improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

14.3.2. Termination for Convenience. A contract may be terminated for convenience at the option of the City if the termination is in the best interest of the City. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. However, the contractor shall not be reimbursed for any anticipatory profits that have not been earned prior to the date of termination. The contractor must not be paid any equitable compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

14.3.3. Termination by Mutual Consent. In special circumstances a contract may be terminated by mutual consent of the parties.

14.3.4. Termination for Lack of Funding. A contract may be terminated at the option of the City for a lack of funding or a change in funding policy. In the event of such non-appropriation of funds or change in funding policy at any time during the term of the contract as would prevent the City from making payment under the terms and conditions of the contract, the City may terminate the contract without the assessment of any charges, fees or financial penalties against the City.

14.4. Termination for Default.

14.4.1. The Procuring Agency may provide the Law Department with documentation demonstrating a material breach of the contract by the contractor.

14.4.2. If the Procuring Agency finds that the contractor is in default, the Procuring Agency may provide the contractor with a written notice to cure the default.

14.4.3. The Law Department may approve the issuance of the notice to cure the default and the issuance of a termination for default.

14.4.4. If the contractor disputes the issuance of a termination for default, the contractor may file a timely appeal to the Board. The contractor may not file an appeal in response to a notice to cure the default.

14.5. Termination for Convenience.

14.5.1. The Procuring Agency may provide the Law Department with documentation demonstrating that termination of the contract for convenience is in the best interest of the City.

14.5.2. The Procuring Agency may consult with the Law Department before the issuance of the notice of termination for convenience and any resulting contract modification

14.5.3. If the Procuring Agency finds that the contract should be terminated for convenience, the Procuring Agency must provide the contractor with written notice that the contract will be terminated for convenience on the date specified in the notice. The notice must require that the contractor provide the Procuring Agency with documentation indicating the amount of reasonable costs claimed by the contractor as a result of the termination for convenience.

14.5.4. The contractor must provide the Procuring Agency, within the time specified in the notice of termination for convenience, with documentation substantiating the amount of reasonable costs the contractor claims as a result of the termination for convenience.

14.5.5. If the Procuring Agency and the contractor agree on the amount of reasonable costs owed to the contractor as a result of the termination for

convenience, the City and the contractor may enter into a contract modification, if necessary, setting forth the amount owed to the contractor as reasonable costs arising from the termination for convenience.

14.5.6. If the contractor and the Procuring Agency cannot agree on the amount of reasonable costs owed to the contractor as a result of the termination for convenience, the contractor may file a timely appeal to the Board after exhausting any claim process administered by the Procuring Agency.

14.6. Termination by Mutual Consent.

14.6.1. The Procuring Agency may provide the Law Department with documentation justifying termination of a contract by mutual consent.

14.6.2. If the Procuring Agency finds that it is in the best interest of the City to terminate the contract by mutual consent, the Procuring Agency may enter into a termination agreement.

14.6.3. The Law Department may approve a termination agreement.

14.7. Termination for Lack of Funding. The payment of invoices and any amounts due the contractor under a contract is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and the Code. If the terms of the contract exceed a budget as adopted by the Baltimore City Council, then that portion of the contract which exceeds a properly adopted budget shall be contingent upon further appropriation by the City. In the event of such non-appropriation of funds or change in funding policy at any time during the term of the contract as would prevent the City from making payment under the terms and conditions of the contract, the City may terminate the contract without the assessment of any charges, fees or financial penalties against the City by providing written notice of intent to terminate to the contractor. The contractor shall not begin any additional work or services related to the contract upon receipt of notification of intent to terminate by the City.

14.10. Suspension of Work.

14.10.1. The Procuring Agency unilaterally may order in writing the suspension, delay, or the interruption of all or any part of the work under a contract (i.e. suspension of work) for such period of time as the Procuring Agency may determine to be appropriate for the convenience of the City.

14.10.2. If a contractor is directed by the City to recommence work after a suspension of work, the contractor may provide the Procuring Agency with documentation indicating the amount to which the contractor claims it is due as a result of the suspension of work. If the City terminates the contractor for default after an order to suspend work, the contractor is not entitled to make a claim against the City for the suspension of work.

14.10.3. If a contractor and the Procuring Agency cannot agree on the amount of reasonable costs incurred by the contractor arising from the suspension of work, the contractor must file a timely appeal to the Board after exhausting any claim process administered by the Procuring Agency.

## **II. Debarment/Suspension Regulations**

1. Scope and Authority. The Board has the authority to issue these rules and regulations pursuant to the Baltimore City Code Art. 5, § 40-3 to carry out this subtitle. This Section shall be known as the “Debarment Regulations.”

2. Debarment Definitions. These Debarment Regulations incorporate the terms defined in the Baltimore City Code Art. 5, § 40-1; except as follows:

2.1. “Convicted” of the bribery offenses described in the Baltimore City Code Art. 5, §§ 40-5, 40-6 includes: (1) judgment of conviction; (2) an accepted plea of nolo contendere; and (3) the imposition of probation before judgment.

2.2. “Convicted” under the laws of the City, this State, another state, or the United States described in the Baltimore City Code Art. 5, § 40-7 includes: (1) judgment of conviction; (2) an accepted plea of nolo contendere; and (3) the imposition of probation before judgment.

3. Written Notices. All required notices given under these Debarment Regulations must be in writing.

4. Investigation and Preliminary Recommendation to the Board. Upon completion of an investigation,<sup>31</sup> the City Solicitor, or his designee, shall make a recommendation to the Board<sup>32</sup> whether the Board should: (1) institute debarment proceedings against the person; and (2) suspend the person pending a final decision.

5. Suspension Pending Decision.

5.1. Suspension of Person and / or Business Pending Decision. Pending a final decision on debarment, the Board may suspend the person against whom debarment proceedings have been instituted.<sup>33</sup>

5.2. The Board shall provide notice of the suspension to the person.

5.3. If a person suspended by the Board is a principal in a business, then the business is suspended to the same extent that the person is suspended under Baltimore City Code Art. 5, subtitle 40 on receipt of notice of its suspension.

5.4. Modification or Termination of Suspension. A person or business suspended pursuant to the Baltimore City Code Art. 5, § 40-18 may petition the Board to modify or terminate the suspension.

5.5. Contents of the Petition for Modification or Termination of Suspension. The person or business petitioning for modification or termination of suspension shall submit to the Board information and argument on whether the basis for the suspension stated in the notice exists.

5.6. Hearing on the Petition for Modification or Termination of Suspension.

5.6.1. The Board may, in its sole discretion, conduct a hearing on the petition, after notifying the parties of the time and place of the hearing.

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<sup>31</sup> See Baltimore City Code Art. 5, §§ 40-11, 40-12.

<sup>32</sup> See Baltimore City Code Art. 5, § 40-13

<sup>33</sup> See Baltimore City Code Art. 5, Subtitle 40.



5.6.2. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City.

5.6.3. The Board, or its designee, shall set reasonable guidelines and limitations for the presentations to be made at the hearing.

5.6.4. If a designee conducts the hearing, the designee shall make a recommendation to the Board of whether the suspension should be modified, terminated or continued based on the information and argument presented to the designee.

5.7. Decision by the Board.

5.7.1. The Board shall determine whether the integrity of the contracting process and the best interests of the City would be served by continuing, modifying, or terminating the suspension.

5.7.2. The Board shall give the petitioner notice of the Board's decision.

6. Notice, Hearing, and Decision – Automatic Debarments.

6.1. Notice and Opportunity for Hearing. When the Board learns of the conviction, the Board shall: (1) notify the person of the person's automatic debarment;<sup>34</sup> and (2) will give the person a reasonable opportunity to be heard at a scheduled meeting of the Board, within 30 days after such notice, on whether the basis for debarment stated in the notice exists.

6.2. Written Submission before Hearing. Within 10 days after the Board notifies a person of an automatic debarment, the person may submit to the Board in writing information and argument on whether the basis for automatic debarment stated in the notice exists.

6.3. Hearing. On consideration of debarment by the Board under the Baltimore City Code Art. 5, § 40-5: (1) the Board will permit the person to present oral argument to the

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<sup>34</sup> See Baltimore City Code Art. 5, § 40-5.

Board, or to waive oral argument and submit written argument only; (2) the presiding member of the Board shall determine, in their sole discretion, all procedural issues, including imposing reasonable time limits on each party's oral argument; (3) the parties shall each have no more than 20 minutes to present oral argument, unless otherwise extended by the Board; (4) the City Solicitor shall proceed first and may reserve part of their allotted time for rebuttal; and (5) the person shall proceed second.

6.4. Decision of Board. Subject to the deferral of the decision by the Board for a reasonable period of time, the Board shall determine whether the person is debarred from entering into or performing under a contract with the City until the debarment is removed in accordance with Part V of the Baltimore City Code Art. 5, subtitle 40.

7. Notice and Hearing – Other Debarments.

7.1. Notice of Proposed Debarment. When the Board receives information that indicates a basis for debarring a person under the Baltimore City Code Art. 5, § 40-6, § 40-7, or § 40-8, the Board may institute debarment proceedings by providing notice to that person ("Notice of Proposed Debarment") which shall include: (1) the grounds for the debarment; (2) notice of the person's right to a hearing before the Board; and (3) notice that the right to a hearing is waived unless the person files a request for hearing, as required by the Baltimore City Code Art. 5, § 40-17(c).

7.2. Request for Hearing. The request for a hearing must: (1) admit or deny each fact in support of the grounds for the debarment stated in the Board's Notice of Proposed Debarment; (2) provide detailed, substantive reasons for each denial; (3) identify any legal issues or defenses that the person intends to raise during any proceeding; and (4) identify any mitigating factors that the person intends to prove.

7.3. Written Submissions before Hearing.

7.3.1. Within 10 days after filing a request for a hearing, the person must submit to the Board: (1) a list of the names and addresses of all individuals that the person intends to call as witnesses during the hearing; and (2) identify all

documentary evidence which supports the person's opposition to the grounds for the debarment in the Board's Notice of Proposed Debarment.

7.3.2. In lieu of the submissions to the Board required in 7.3.1, the person may waive the oral hearing provided in 7.4 and described in 7.5 and submit argument to the Board in written form only.

7.4. Hearing Generally.

7.4.1. The Board shall conduct a hearing within 90 days after receipt of the request for a hearing required in the Baltimore City Code Art. 5, § 40-17(c) or at such other time as may be extended by the Board for good cause shown.

7.4.2. The Board shall notify the parties of the time and place of the hearing.

7.4.3. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City ("designee").

7.5. Conduct of the Hearing.

7.5.1. The Board, or its designee, shall conduct the debarment hearing in the manner described in this subsection, reserving the authority to resolve issues concerning: (1) offers of proof; (2) the admissibility of evidence; and (3) other matters of hearing procedure.

7.5.2. The Board or its designee shall set reasonable guidelines and limitations for the presentations to be made at the hearing before the Board or its designee including, but not limited to: (1) testimony shall be under oath and subject to cross examination; (2) limits may be placed on cross-examination; (3) affidavits and depositions may be considered; (4) hearsay evidence may be admitted and given appropriate weight; (5) incompetent, unreliable, irrelevant, or unduly repetitious evidence will be excluded; (6) evidence may be admitted at the Board's own request; (7) the record of the hearing may be kept open after the close of evidence, for good cause shown, for the receipt of additional evidence or submissions by the parties; (8) make other rulings necessary to promote fairness

and efficiency in the hearing process; and (9) may request that the parties submit proposed findings of fact and conclusions of law to the Board, or its designee, within 10 days after of the conclusion of the hearing.

7.5.3. The Board, or its designee, shall give effect to the rules of privilege recognized by law.

7.5.4. The City has the burden of proof and the burden of persuasion.

7.5.5. The Board, or its designee, in conducting the hearing, may follow the usual order for the presentation of evidence (City first, person subject to debarment second, City rebuttal, if any) permitting: (1) each party to be represented by counsel authorized to practice law in Maryland; (2) the presentation of direct and cross-examination of witnesses; (3) the offer of other evidence; and (4) the presentation of opening and closing statements in support of the parties' respective positions.

7.5.6. The Board, or its designee, shall have the authority to take such further action as may be necessary to preside over the debarment hearing and to render the recommended proposed findings of fact and conclusions of law to the Board, a copy of which shall be submitted to the parties.

8. Duties of the City – Other Debarments. In addition to any other duties described herein, the City shall have the responsibility to ensure that: (1) the hearing is on the record and open to the public, unless otherwise provided by law; (2) the creation, at the City's cost, of a verbatim recordation of all testimony, except that a party requesting a copy of the transcript must bear the expense of the transcript; and (3) a record of the proceedings, including the verbatim recordation or transcript of the proceedings, the exhibits and the recommended proposed findings of fact and conclusions of law submitted to the Board for consideration in rendering a decision pursuant to the Baltimore City Code Art. 5, § 40-19, shall be maintained and retained.

9. Decision of the Board – Other Debarments.

9.1. The Board shall: (1) determine whether the integrity of the contracting process and the best interests of the City would be served by debarring the person from entering into or performing contracts with the City; and (2) for that purpose, consider all relevant factors, including: (i) the nature and seriousness of the act that caused the person to be subject to debarment; (ii) the time the act occurred; (iii) whether and to what extent the person cooperated with authorities investigating the matter; (iv) the conditions under which the person cooperated; and (v) the conduct of the person since the act occurred.

9.2. The Board shall notify the person of the Board's decision within 90 days after the hearing, unless the Board, in its sole discretion, extends the time period.

9.3. The notice of decision issued by the Board shall: (1) state whether the person is debarred for the act(s) in question; and (2) if the person is debarred, state the period of debarment.

9.4. The Board shall notify a business of any debarment of the business under the Baltimore City Code Art. 5, § 40-20.

## 10. Reinstatement.

10.1. Automatic Reinstatement. If the conviction that was the basis for debarment or suspension is reversed or otherwise voided, the debarment or suspension terminates automatically.

10.2. Petition for Reinstatement. A person debarred under the Baltimore City Code Art. 5, subtitle 40 may petition the Board for removal of the debarment, as provided in the Baltimore City Code Art. 5, § 40-22. The petition shall include: (1) each fact in support of reinstatement; (2) detailed, substantive reasons for reinstatement; (3) all legal issues on which the person intends to rely during the reinstatement hearing; and (4) whether the integrity of the contracting process and the best interests of the City would be served by continuing the debarment.

## 10.3. Hearing.

10.3.1. Within 90 days after receipt of a petition, the Board shall conduct a hearing, which may be extended by the Board for good cause shown.

10.3.2. The Board shall notify the parties of the time and place of the hearing.

10.3.3. The Board may delegate the authority to conduct the hearing to a designee, who is a member of the Maryland Bar not currently employed by the City (“designee”).

10.3.4. The Board, or its designee, shall set reasonable guidelines and limitations for the presentations to be made at the hearing.

10.3.5. If a designee conducts the hearing, the designee shall make a recommendation to the Board of whether the debarment should be removed by determining whether the integrity of the contracting process and the best interests of the City would be served by continuing the debarment and considering, for that purpose, all relevant factors, including those listed in the Debarment Regulations § 9.1.1.

10.4. Decision. Within 90 days after receipt of the petition, the Board shall notify the person of the Board’s decision. The notice shall state: (1) whether the debarment is removed or continued; and (2) if continued, how long the person must wait before again petitioning for reinstatement.

### **III. Grant Regulations**

#### **1. Authority for Acceptance of Grants.**

1.1. Federal Government Grants. The City has the general power to accept from the United States or any agency thereof any grant or aid of any character, and, upon approval of the Board, to make any contract with the United States or any agency thereof.<sup>35</sup>

1.2. Other Governmental and Private Grants. The City may also accept grants for its corporate purposes from any government, governmental agency, or person.<sup>36</sup>

1.3. Unanticipated Grants. Grants from private or governmental sources which could not be expected with reasonable certainty at the time of the formulation of the proposed

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<sup>35</sup> See Baltimore City Charter Art. II, § 3 Art. II, §§ 15(e), 15A(d), 28(f).

<sup>36</sup> See Baltimore City Charter Art. I, § 3.

Ordinance of Estimates may be made available to the appropriate municipal agency for expenditure by a supplementary appropriation ordinance recommended to the City Council by the Board, duly passed by the City Council by a majority vote of its members and approved by the Mayor.<sup>37</sup>

2. Authority for Distribution of Grants.

2.1. The City has the authority to distribute a grant to a grantee as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.<sup>38</sup>

2.2. The Board is responsible for awarding contracts and supervising all purchasing by the City as provided in the Charter.<sup>39</sup> The Charter states "... all other contracts involving an expenditure greater than an amount set under subsection (b) of this section, ... made by a municipal agency, ...shall be submitted to the Board of Estimates for approval and shall be binding upon the City only when so approved. The Board may adopt rules and regulations governing the procedures and requirements to be followed by any municipal agency in making purchases or other contracts involving an expenditure that does not require formal advertising under subsection (c) of this section."<sup>40</sup>

3. Grant Agreements. A government may use a grant agreement as a legal instrument reflecting a relationship between the government and another recipient when:<sup>41</sup>

3.1. The principal purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring (by purchase, lease, or barter) property or services for the direct benefits or use of the government; and

3.2. Substantial involvement is not expected between the government and recipient when carrying out the activity contemplated in the agreement.

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<sup>37</sup> See Baltimore City Charter Art. VI.

<sup>38</sup> See Baltimore City Charter Art. II, § 47.

<sup>39</sup> See Baltimore City Charter Art. VI, § 11(a).

<sup>40</sup> See Baltimore City Charter Art. VI, § 11(f).

<sup>41</sup> Language taken from 31 U.S.C. § 6304.

#### 4. Grant Agreement versus a Procurement Contract.

4.1. A procurement contract is different than a grant agreement. A procurement contract is the legal instrument reflecting a relationship between the government and recipient when:<sup>42</sup>

4.1.1. The principle purpose of the relationship is to acquire (by purchase, lease or barter) property or services for the direct benefit or use of the government; or

4.1.2. The government decides in a specific instance that the use of a procurement contract is appropriate.

4.2. Procurement is the contracting for any public work, or the purchase of any supplies, materials, equipment, or services for the government involving an expenditure of appropriated funds.<sup>43</sup>

#### 5. Grant Agreement versus a Gift or Trust.

5.1. A gift or trust is different than a grant agreement.

5.2. A gift is the transfer of any thing or service of economic value, regardless of the form, without adequate, identifiable, and lawful consideration. Gifts can include an inter vivos gift, inter vivos endowment, bequest, devise, legacy, or testamentary endowment of an interest in real or personal property that is to or for the use of the government or any of its officers or units.<sup>44</sup>

5.3. A trust is an arrangement whereby property is transferred with intention that it be administered by the government (i.e. trustee) for another's benefit. The City may receive in trust, and may control for the purposes of such trust, all moneys and assets which may have been or shall be bestowed upon it by will, deed or any other form of gift or conveyance in trust for any corporate purpose, or in aid of the indigent poor, or for the general purposes of education or for charitable purposes of any description. All trust

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<sup>42</sup> Language taken from 31 U.S.C. § 6303.

<sup>43</sup> See Baltimore City Charter Art. VI, § 11.

<sup>44</sup> See Baltimore City Code Art. 8, § 2-17.



funds now held or subsequently received shall be administered with respect to investment and reinvestment, subject to any limitations in the trust, by the Board of Finance.<sup>45</sup>

5.4. Before a gift or trust is accepted by a City agency, the City agency should consult with the Bureau of Purchases as to whether the acceptance of the gift or trust may affect the integrity of the City's procurement system.

6. Procedure for Acceptance of Grants. The City shall follow the procedures of AM – 404-1: Financial Grants.

7. Procedure for Distribution of Grants.

7.1. A competitive process for the distribution of grants is not required by the Charter.<sup>46</sup> Even though a competitive process is the preferred method for the selection of a grantee, it is at the discretion of the City agency whether to use a competitive process. If the funding source for the grant (e.g. federal or state government) requires a competitive process, the City shall use a competitive process for the distribution of grants.

7.2. If a grantee is named or designated in the grant award approved by a funding source and accepted by the City agency and the Board, the City may enter into a non-competitive grant agreement with that grantee.

7.3. If a grantee is named or designated in a resolution or appropriation approved by the City Council, the City may enter into a non-competitive grant agreement with that grantee.

7.4. A grantee shall be responsible pursuant to § 7.7.2. of the Procurement Regulations.

8. Encumbered Funding and Tax Exempt Status.

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<sup>45</sup> See Baltimore City Charter Art. I, § 3.

<sup>46</sup> See Baltimore City Charter Art. VI, § 11(f).

8.1. Grants from governments and private sources shall be encumbered by the City for their specific purpose. If allowed by the funding source and if necessary for financial assistance, the grant funding shall be carried over to the next fiscal year.<sup>47</sup>

8.2. The City is a governmental unit that is exempt from federal income taxes under the Internal Revenue Code of 1986 (“IRC”), as amended from time to time, and the use of funds from a grant to the City will be solely for exclusively public purposes as defined by Section 170(c)(1) of the IRC.

9. Compliance with Requirement of Funding Sources. A grant may be funded by federal, state, City, or private funding sources. The identification of the source of funding should be indicated in the grant agreement. As applicable, a grantee shall comply with the requirements of the funding source, including but not limited to the terms and conditions of the notice of grant award, statutes and regulations, and manuals of the funding source.

10. Baltimore City Foundation, Inc.

10.1. If a person desires to provide a grant for the City but wants to provide it to a nonprofit organization instead of the government, a person may provide a grant to the Baltimore City Foundation, Inc. (“BCF”). The City has an agreement with BCF to receive grants on behalf of the City.

10.2. BCF is an organization exempt from Federal income tax under section 501(c)(3) of the IRC. The IRC has determined BCF is not a private foundation because it satisfies the requirements of section 509(a)(3) of the IRC.

**IV. SEVERABILITY.** If a court of competent jurisdiction holds that part of these regulations is invalid, the invalidity does not affect other parts.

**V. EFFECTIVE DATE.** These regulations become effective 60 calendar days after the Board adopts them.

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<sup>47</sup> See Baltimore City Charter Art. VI, § 9(c)(2).